

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRET WILLIAM ROSS,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 3:24-cv-05528-TL

ORDER ON SECOND REPORT AND
RECOMMENDATION

This matter comes before the Court on the August 27, 2024, Report and Recommendation of United States Magistrate Judge Brian A. Tsuchida (Dkt. No. 17) (“Second Report and Recommendation”) and Petitioner’s Objection to Report and Recommendation (Dkt. No. 19).¹ Having reviewed *de novo* the Second Report and Recommendation, Petitioner’s objections, and the remaining record, the Court ADOPTS the Second Report and Recommendation and OVERRULES the objections.

¹ Mr. Ross mistakenly filed his objection under Case Number 3:24-5573 on September 4, 2024. Dkt. No. 18-1 at 1. He re-filed it in this case on September 10, 2024 (Dkt. No. 18), but then filed it *again* date-corrected to September 10, 2024 (Dkt. No. 19). The Court will consider the objection at Docket Number 19 as the operative document.

1 Petitioner filed timely objections on September 10, 2024. Many of the objections repeat
2 his prior objections (*compare* Objections 1–8 in Dkt. No. 4, *with* Objections 1–7 & 10 in Dkt.
3 No. 19), which the Court already addressed in its August 7, 2024, Order adopting the first Report
4 and Recommendation (Dkt. No. 5). Five of Petitioner’s objections (Objections 11–15) relate to
5 requests for documents and premature discovery that have now been addressed in a separate
6 Order. *See* Dkt. No. 22.

7 Objection 8 claims that the magistrate judge violated 28 U.S.C. § 2250 by not providing
8 Petitioner with the records he requested at no cost. Dkt. No. 19 at 2. However, this statute applies
9 only where a petitioner has been granted leave to proceed *in forma pauperis* (“IFP”). Here, the
10 Court denied Petitioner’s IFP application. Dkt. No. 5 at 2. Petitioner’s final two objections
11 complain that this Court has neither ordered an answer nor reviewed his motion to appoint
12 counsel. *See* Dkt. No. 19 at 2–3 (Objections 9 & 15). But until Petitioner pays the \$5.00 filing
13 fee, the case is not considered properly filed, so consideration of the actions requested of the
14 Court is premature.

15 In short, none of Petitioner’s objections addresses the issue of whether he should be
16 issued a certificate of appealability, or the three reasons Magistrate Judge Tsuchida set forth in
17 his recommendation for denying the certificate. The Court agrees with Magistrate Judge
18 Tsuchida’s analysis regarding whether Petitioner should be issued a certificate of appealability.

19 //

20 //

21 //

22 //

23 //

24 //

1 For the foregoing reasons, the Court hereby ORDERS:

2 (1) The Court ADOPTS the Report and Recommendation (Dkt. No. 17) and

3 OVERRULES Petitioner's objections.

4 (2) The Court DISMISSES WITHOUT PREJUDICE the case and DENIES issuance of a

5 certificate of appealability.

6
7 Dated this 8th day of October 2024.

8 

9 Tana Lin
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24